



Department of Justice

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Northern District of New York

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FORMER MCGINN, SMITH & CO., INC. SENIOR MANAGING DIRECTOR SENTENCED

ALBANY, N.Y.—Matthew Rogers, of Miami, Florida, a citizen of the United Kingdom and a resident alien of the United States, who worked for McGinn, Smith & Co., Inc. as a senior managing director from 2007 until 2009, was sentenced today to one year of probation and ordered to pay a \$10,000 fine by United States District Judge David N. Hurd, announced United States Attorney Richard S. Hartunian, Toni M. Weirauch, Special Agent-in-Charge, Internal Revenue Service, Criminal Investigation, New York Field Office, and Andrew W. Vale, Special-Agent-in-Charge, Federal Bureau of Investigation, Albany Division. The sentence follows Rogers' November 29, 2011 guilty plea to filing a false income tax return related to his failure to declare \$948,000 in fees that he had received between 2006 and 2009 in connection with private placement offerings sold by McGinn, Smith & Co., Inc.

In 2009, Rogers executed backdated promissory notes regarding some of the transactions to make it appear that they were loans. Rogers knew that these backdated promissory notes would be submitted to FINRA. In addition, on his 2009 return, Rogers falsely declared that \$873,000 of the \$948,000 was income in 2009 for "forgiveness of indebtedness" when he knew that this was false because the money was never a loan and was received over several tax years.

Rogers admitted the following details in connection with his guilty plea:

The 2006 Fees

On September 29, 2006, Timothy M. McGinn, David L. Smith, and Matthew Rogers formed

TDM Cable Funding LLC. That same day, TDM Cable Funding LLC purchased \$2.6 million of cable contracts related to two Florida housing developments. The McGinn, Smith & Co., Inc. broker-dealer then raised over \$3.5 million from investors seeking to invest in those cable contracts. In 2006, Rogers received \$385,000 in fees from TDM Cable Funding LLC in connection with the September 2006 offering. His partners, Timothy M. McGinn and David L. Smith, received similar fees.

On January 10, 2007, Rogers submitted a personal financial statement to Mercantile Bank in Boca Raton, Florida requiring him to list all sources of income and all liabilities for 2006. Rogers concealed the \$385,000 in fees that he had received in 2006 by failing to include it as income that he had received in 2006. Rogers also did not list the fees as “loans.”

In the fall of 2007, when Rogers gathered materials to prepare his 2006 federal income tax return, he called Timothy M. McGinn who told him that the \$385,000 of fees were “loans,” and said “that’s the way it is.”

On October 15, 2007, Rogers signed the 2006 joint U.S. Individual Income Tax Return prepared for himself and his wife under the penalty of perjury knowing that the total income of \$196,566 reported on line 22 of the return was false because it did not reflect the \$385,000 in fees that he had received. The return was filed on October 18, 2007 at the Atlanta, Georgia service center.

The 2007 Fees and Return

During 2007, Rogers received \$278,000 in fees in connection with three McGinn, Smith & Co., Inc. offerings which raised more than \$10 million from investors.

On November 13, 2008, Rogers filed the joint 2007 U.S. Individual Income Tax Return

prepared for himself and his wife under the penalty of perjury knowing that the total income reported was false because it did not reflect the \$278,000 in fees that he had received in 2007.

The 2008 Fees and Return

During 2008, Rogers received \$285,000 in fees in connection with a McGinn, Smith & Co., Inc. offering that raised more than \$3 million from investors.

On January 20, 2009, Rogers submitted a personal financial statement to Mercantile Bank in Boca Raton, Florida requiring him to list all sources of income and all liabilities for 2008. Rogers concealed the \$285,000 in fees that he had received in 2008 by failing to include it as income that he had received in 2008. Rogers also did not list the fees as “loans.”

On October 19, 2009, Rogers filed the joint 2008 U.S. Individual Income Tax Return prepared for himself and his wife under the penalty of perjury knowing that the total income reported was false because it did not reflect the \$285,000 in fees that he had received.

The 2009 Fees

On June 10, 2009, Rogers received \$25,000 in fees in connection with a McGinn, Smith & Co., Inc. offering which raised more than \$1 million from investors.

The Execution of Backdated Promissory Notes

In November 2009, Timothy M. McGinn pressured Rogers to sign promissory notes in connection with several of the fee transactions involving TDM Cable Funding LLC. When Rogers learned about the promissory notes, he called McGinn. McGinn told Rogers that FINRA needed the notes and that Rogers had to sign them. Rogers, who did not want to be required to repay the fees that he had received, obtained a November 13, 2009 letter from McGinn, as managing member of TDM Cable Funding LLC, stating that the “debt” related to those fee transactions would be

“forgiven” over four years. After receiving this fraudulent “forgiveness-of-debt” letter, Rogers executed the promissory notes. The only date on the promissory notes was the date of each transaction. Although Rogers knew that the promissory notes would be provided to FINRA, Rogers did not date his signature, and the promissory notes did not reveal that Rogers signed them in November 2009, more than two years after the transactions had actually occurred.

The 2009 Return Falsely Declaring \$873,000 as “Forgiveness of Indebtedness”

On October 15, 2010, after Rogers became aware of the federal criminal investigation, Rogers filed his 2009 income tax return declaring \$873,000 of the \$948,000 of fees that he had received from 2006 through 2008 as income. Rogers falsely described the \$873,000 as “forgiveness of indebtedness” despite knowing the fees had never been a loan and that he had an express agreement with McGinn that he would not have to repay the fees.

The total amount of loss is the tax loss resulting from Rogers's failure to declare the \$948,000 that he received in fees.

The investigation was conducted by the Criminal Investigation Division of the Internal Revenue Service and the Federal Bureau of Investigation. The case is being prosecuted by Assistant United States Attorneys Elizabeth C. Coombe, Richard D. Belliss, and Wayne A. Myers of the United States Attorney’s Office for the Northern District of New York.

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